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225-3741

NINETY-FOURTH CONGRESS
Congress of the United States
House of Representatives

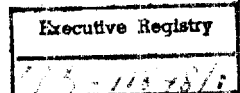
GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

March 26, 1976



Honorable George Bush
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Bush:

Thank you for your response of March 1, 1976 to questions we sent on September 26, 1975 regarding the application of security classification policy in Executive Order 11652 to CIA operations.

Comments you supplied regarding four of our questions seem to require further attention. Would you please furnish us additional information as requested below:

Question 2: The Agency's response to the question regarding the criteria for determining whether an item of information is "official information" and subject to possible classification, shows that all information received by CIA, including classified information, is considered by it to be "official data and the property of the U.S. Government."

What is the basis in law for CIA to state that each of the types of information referred to below becomes property of the U.S. Government and subject to classification as Confidential, Secret, or Top Secret under Executive Order 11652?

- (a) Information published under a copyright.
- (b) Information received by CIA from an individual who has already made this information known to others without secrecy restriction.
- (c) Information received by CIA from an individual who can be expected to make it known to others without secrecy restriction.

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- (d) Privately generated information received by CIA from an individual who assigned a marking of Confidential, Secret, or Top Secret to it without any authorization from a Federal agency, and who has disseminated or can be expected to disseminate the information outside of U.S. Government channels.
- (e) Information received by CIA regarding people, organizations, or things which does not lend itself to the secrecy control procedures in Executive Order 11652 for information requiring protection against unauthorized disclosure.

Question 3: The question requested a statement of criteria established by CIA for its use in determining whether items of official information require protection under Executive Order 11652 against unauthorized disclosure in the interest of the national defense of the United States. (Use of the term "national defense" reflects the fact that the Freedom of Information Act, 5 U.S.C. 552(b)(1), makes a distinction between "national defense" and "foreign policy". Executive Order 11652 also uses the term "national defense".)

Your reply did not cite any criteria established by CIA, or otherwise respond to this question. CIA regulation HR 10-23, which your letter referred to as containing classification criteria and guidance for intelligence sources and methods information, provides nothing other than the general classification policy promulgated in Executive Order 11652 for all agencies.

Apparently, the CIA has no instructions specifying the type of damage to the national defense that the Agency should strive to preclude through use of the classification system. Nor is there any indication that CIA has placed restrictions on using the designations "intelligence source" and "intelligence method" as catch-alls for keeping information secret.

If CIA has in fact issued instructions which augment the general policy statements in Executive Order 11652 for determining whether official information requires protection against unauthorized disclosure to preclude damage to the national defense, please furnish them to this Subcommittee.

Question 6b: This question referred to the requirement in Executive Order 11652 that authority to assign information to a classification category be exercised only by officials who are properly designated in writing. According to the CIA's reply, CIA considers that restriction to be unsatisfactory for the performance of its functions and responsibilities.

Your answer is truly amazing. People everywhere are deeply concerned about the fact that procedures currently promulgated in Executive Order 11652 permit the designation of many thousands of government officials to exercise censorship authority over information which rightfully belongs to the public. This Subcommittee is reexamining its support of the provisions

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in subsection (b)(1) of the Freedom of Information Act which validate existing classification policy in the Executive Order, including the widespread delegation of classification authority.

Will you please furnish this Subcommittee:

- (a) The details of such problems as have occurred in CIA since the effective date of Executive Order 11652 (June 1, 1972), due to the fact that classification authority may only be exercised by officials designated in writing pursuant to the order; and
- (b) Your recommendations for policy on the question of exercising classification authority which Congress could include in security classification reform legislation.

Question 14: The response to this question shows that the CIA strives to protect information revealing intelligence sources and methods even when the information does not qualify for classification and protection under Executive Order 11652 in the interest of the national defense or foreign relations. As indicated by the last sentence of your answer, all information that could be considered as revealing some sort of intelligence source or some sort of intelligence method apparently is viewed as having been born into secrecy and can be released only if CIA regulations specifically permit disclosure.

Before sending you our letter, we had been advised that section 9 of Executive Order 11652 provides for protecting intelligence sources and methods under the security classification system if protection is necessary. Section 9 provides: "The originating department or other appropriate authority may impose, in conformity with the provisions of this order, special requirements with respect to access, distribution and protection of classified information and material, including those which presently relate to communications intelligence, intelligence sources and methods and cryptography."

Our question 14 reflected the possibility that the President might have issued revised instructions without publishing them. But after we reviewed the President's recent recommendations for criminalizing unauthorized disclosures of intelligence sources and methods (embodied in H.R. 12006), we concluded that no change in Executive Order 11652 had been made, since his proposed legislation would only protect sources and methods information assigned a security classification pursuant to an Executive Order.

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Therefore, would you advise us whether CIA regulations do in fact prescribe criteria and procedures for protecting non-classified intelligence sources and methods, and, if so, please send us a copy.

Sincerely,

BELLA S. ABZUG
Chairwoman

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Legislative Counsel

EXTENSION

NO.

DATE 9 April 1976

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

Director

14 Apr 76
SKH/ey

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Attached for your signature is an ~~interim reply~~ to a letter from Chairwoman Bella Abzug requesting certain additional information to that previously provided concerning the Agency's implementation of Executive Order 11652 on classification.

The request is now under review by appropriate Agency components.

George L. Cary
Legislative Counsel

Attachment
as stated

	UNCLASSIFIED		CONFIDENTIAL		SECRET
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EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI		✓		
2	DDCI				
3	S/MC				
4	DDS&T				
5	DDI				
6	DDA				
7	DDO				
8	D/DCI/IC				
9	D/DCI/NIO				
10	GC				
11	LC	✓			
12	IG				
13	Compt				
14	D/Pers				
15	D/S				
16	DTR				
17	Asst/DCI				
18	AO/DCI				
19					
20					
21					
22					
SUSPENSE		<div style="border: 1px solid black; border-radius: 50%; width: 100px; height: 40px; display: flex; align-items: center; justify-content: center;"> <div style="font-size: 2em; font-weight: bold;">7 Apr</div> <div style="font-size: 0.8em; margin-left: 5px;">Date</div> </div>			

Remarks:

Please develop DCI response.

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30 Mar
Date

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Friday - 9 April 1976

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II. [REDACTED] LIAISON Tim Ingram, House Government Operations Committee, Government Information and Individual Rights Subcommittee staff, called and said that Chairwoman Bella Abzug had discussed with Mr. Bush her request for him to appear before her Subcommittee on Privacy Act amendments and Mr. Bush had told Mrs. Abzug that he would be unable to appear on Tuesday, 13 April, because he would be out of town. Mr. Bush had asked whether they could schedule his appearance on Wednesday, 14 April. Ingram said that with the Easter recess coming up that Wednesday would be very hectic and so they were putting off the Director's appearance until after the Easter recess. Ingram suggested 27 April at 10:30 a. m. I told him I would check the Director's availability and get back in touch.

Later in the day I told Ingram that the Director would be out of town on the 27th, but the 28th was a possibility. I told him I would let him know something more definite early next week.

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20. [REDACTED] LEGISLATION Together with [REDACTED]
[REDACTED] met with Tim Ingram, Staff Director,
and Ted Jacobs, staff member, of the House Government Operations
Subcommittee on Government Information and Individual Rights, and
discussed the effects of H. R. 169 and H. R. 12039 upon the Agency.
We discussed briefly the problems the Agency would have with the
requirement for notification. Ingram had requested the meeting for his
background information. Ingram was aware that Chairwoman Bella
Abzug (D., N. Y.), had talked to the Director earlier in the day but
was not aware of the outcome of their discussion. Subsequent to the
meeting, [REDACTED] and I met with Mary Lawton, Tom Martin,
and others in the Justice Department, and discussed Justice's proposed
testimony (to be given by Lawton) and the Agency's position. We agreed
it would be difficult to come up with a unified Administration position on
the bills since the programs in question were quite different. Each agency
would have to determine its own position.

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9. [REDACTED] HEARING Received a call from Mike Uhlmann, Assistant Attorney General for Legislative Affairs, Justice Department, alerting me that the hearing tomorrow before Chairwoman Bella Abzug's (D., N.Y.) Subcommittee on Government Information and Individual Rights, House Government Operations Committee, had been postponed until after the recess. He added that Justice is revising their statement to make a clearer distinction between their COINTELPRO program and our CHAOS program. He will keep me posted.

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6. [REDACTED] LIAISON Met with Norm Cornish, Staff Director, House Government Operations Subcommittee on Conservation, Energy, and Natural Resources, and informed him that the Agency had no information to corroborate information he had received that the Soviets were having environmental problems caused by shale excavation polluting a lake in Estonia.

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5. () HEARING I called Mike Uhlmann, Assistant Attorney General for Legislative Affairs, Department of Justice, and inquired as to whether Chairwoman Bella Abzug's (D., N. Y.) Subcommittee on Government Information and Individual Rights, House Government Operations Committee, had set a definite date for the Justice Department to testify on her bills amending the Privacy Act. He said they were told only that the hearing would be scheduled during the week of 24 April and he expects a call from the Subcommittee to set up a date. I explained that we feel it best that we testify after Justice appears. Uhlmann agreed and will check back with me before making any positive commitments to the Subcommittee people as to when Justice will testify.

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10. [REDACTED] LIAISON Tim Ingram, staff of ~~House Government Operations Committee~~, Government Information & Individual Rights Subcommittee, called and asked if the 28th of April would be all right for the Director to appear before the Subcommittee. I told Ingram that the Director said that the 28th looked all right at the moment, but he was going to be out of town the two days preceding that and I wanted to check back with him before making a commitment. I asked Ingram what day Justice Department was going to appear and Ingram said he is waiting for a definite date from Justice and would like to get CIA and Justice together in the same two days. I told Ingram I would be back in touch.

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